charged with the execution of the criminal law. *Davis* v. *A. S. P. C. A.*, 75 N. Y. 362. It may be argued that the machinery provided by the state for the administration of the criminal law, including the discretionary powers and duties of various officers and the forms of procedure and trial, is intended not only to safeguard the rights of the accused, but also to afford the best practicable protection against the injury to society, which is the essence of every crime; and that it is against public policy to allow one accused of an offence undoubtedly criminal to hamper or prevent, by means of a civil suit to which the state cannot be a party, the operation in his case of the machinery presumably best adapted to protect the public interest. This argument disappears if the interest of the state in the prevention of crime is equally well served by the equity trial. That is a question on which opinions may well differ, and on the settlement of which the jurisdiction of equity in this class of cases may properly be made to turn.

The distinction here drawn between two classes of cases, though suggested in a few of the decisions, is nowhere squarely laid down. But it is significant that in both classes of cases the decided weight of the actual decisions in this country supports the classification above suggested, while in England, where the question of the constitutionality of a statute cannot arise, there seems to be no case departing from the old rule. A solution which seems never to have been suggested by the courts, but which would apparently avoid most of the practical difficulties, would consist in allowing the injunction in the second class of cases only under such circumstances or in such form that the criminal action may still go to trial, without irreparable damage to property in the mean time. In all the cases which have yet arisen this might have been accomplished by proper procedure. Thus where the irreparable damage is threatened by repeated arrests on the same charge, the court might enjoin all but one arrest. If then the criminal trial resulted in conviction, it would be appropriate for the equity court to dissolve the injunction.

ACTION BY SERVANT WRONGFULLY DISCHARGED. — A servant who has been wrongfully discharged has two well-recognized remedies against his employer: he may regard the contract of employment as rescinded and sue for such services as he has actually rendered in an action for *quantum meruit*, or he may sue for damages for breach of the contract to employ. A third right, to sue on the special agreement to pay wages at such times as, according to its terms, they were to become due, is recognized in a recent Pennsylvania case, *Allen* v. *Colliery Engineers' Co.*, 46 Atl. Rep. 899. The plaintiff was hired by the defendant company as manager of its business for one year at a certain weekly salary. Later he was wrongfully dismissed. Two weeks after this dismissal, he sued and recovered the wages which should have been due him for the past two weeks. After the termination of the year, he brought the present action for the remainder of the wages promised him. The court held that the former recovery was no bar, as the plaintiff was entitled to treat the contract as still existing, and to sue for wages as they became due, "his readiness to serve being considered as equivalent to actual service." The defendant, however, had only promised to pay for services rendered, and the plaintiff's rendering of them was an implied condition of his right to

receive wages. This condition is apparently regarded by the court as waived by the defendant's refusal to accept. But a true waiver is where one party says that, in spite of the other's breach, he will continue the contract. Here the defendant does not say that, in spite of the plaintiff's enforced non-performance, the contract shall continue, but openly declares it shall not be completed. The condition, then, cannot be considered as waived, and as it has surely not been fulfilled, the plaintiff is not entitled to recover wages, which were dependent on the condition. The defendant has, of course, broken his promise to employ, and for this breach the plaintiff may recover damages. But as in the first action he could have recovered for the breach of the entire contract, no second action should be allowed. The opposite conclusion, in addition to being theoretically wrong, logically leads to the unjust result that a discharged servant is under no duty to find other employment to reduce the employer's damages. His willingness to serve being equivalent to service, he would be entitled to full wages, whether or not he could find work elsewhere.

Several American jurisdictions have adopted the doctrine of the principal case. *Armfield* v. *Nash*, 31 Miss. 361; *Booge* v. *Pac. R. R.*, 33 Mo. 212. Most of the recent decisions, however, are opposed. *Alie* v. *Nodrau*, 44 Atl. Rep. 891 (Me.); *James* v. *Allen Co.*, 44 Ohio St. 226. The doctrine seems to have been adopted on the authority of an English case which allowed *indebitatus assumpsit* for wages, where readiness to serve was alleged. This decision has since been discredited in England. *Emmens* v. *Elderton*, 4 H. L. C. 645, and a recent case shows that there would likewise be no recovery on the agreement to pay wages. *Bruce* v. *Calder*, [1895] 2 Q. B. 253.

RUNNING CABLE CARS WITHOUT LEGISLATIVE AUTHORITY. — An interesting question is involved in *Chicago General Ry. Co.* v. *Chicago City Ry. Co.*, 57 N. E. Rep. 822 (Ill.). The defendant company, acting under a charter authorizing it to operate street cars by animal power, used an underground cable to run its cars. One of these cable cars collided with a car belonging to the plaintiff, whereupon the latter brought an action for the damage resulting. The court held that as there was no allegation of negligence on the part of the defendant, the declaration did not disclose a good cause of action.

The position taken by the plaintiff was that such a use of the streets without legislative authority was a public nuisance, and that he, having sustained special damage, was entitled to recover. This contention is supported by cases holding that the wrongful user of a highway, whether by a traction engine or an unauthorized tramway, is a public nuisance. *Powell* v. *Fall*, L. R. 5 Q. B. D. 597; *Regina* v. *Train*, 2 B. & S. 640. Undoubtedly, if a private person without legislative authority should build and operate a cable line through the streets of a city, he would be violating the rights of the public. It is doubtful if it helps much to call it a nuisance, as the term has always been very loosely applied by the courts. However that may be, the public has a right to free and unobstructed passage over the streets. A line of cable cars would not only obstruct the street to a great degree, but would also make such use by the public more dangerous. This would seem to be such an invasion of the rights of the public as to be unlawful, in the sense that one who suf-